

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ANONYMOUS ,	)	
	)	
Plaintiff ,	)	8:04CV269
	)	
v .	)	
	)	
GORDON KEENE VELLA ,	)	MEMORANDUM AND ORDER
	)	
Defendant .	)	
	)	

---

Plaintiff has filed a motion to compel answers to interrogatories served originally on defendant's counsel on September 19, 2006. Plaintiff requests an order directing defendant to respond to the interrogatories within a set period of time or risk entry of a default judgment. Defendant has not responded to the motion, although defendant has filed his own motion for protective order in reference to a separate matter. Since there is no response to the motion to compel, there is no basis under Fed. R. Civ. P. 37(a)(4) to conclude that the defendant's position in the matter was "substantially justified" so as to avoid the imposition of expenses and fees.

IT THEREFORE HEREBY IS ORDERED:

1. The motion to compel, filing 250, is granted in part, and the defendant shall serve his answers to the subject interrogatories within ten days.
2. Plaintiff is awarded her expenses including reasonable attorney's fees in bringing this discovery matter to the court. Counsel shall confer and in the event they are unable to agree on the amount to be awarded or upon who should bear that expense as between defendant and his counsel, plaintiff's application for fees and expenses shall be filed, supported by appropriate affidavits on those questions, and further supported by brief within fourteen days of this order. Defendant shall have ten days thereafter to submit his response and file appropriate affidavits in opposition. In the event either side desires a hearing on this question, request therefor shall be made in the

application or response, as applicable. In the absence of any response to this order by either plaintiff or defendant regarding the matter of fees and expenses, the sum of \$400.00 will be awarded.

DATED this 21<sup>st</sup> day of February, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge